

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JAMES S. POMEROY SR., and
JAMES S. POMEROY JR.,
(Deceased)
Plaintiff,

v.

ASHBURNHAM WESTMINSTER
REGIONAL SCHOOL DISTRICT,
Defendant.

C.A. NO. 03-40283FDS

DEFENDANT'S MOTION TO DISMISS

Now comes Defendant Ashburnham Westminster Regional School District ("AWRSD") and moves the Court to dismiss the Complaint *See* Fed. R. Civ. P. 12(b)(6). The Complaint purports to assert claims on behalf of Plaintiff James Pomeroy's son, James S. Pomeroy, Jr., who was formerly a student at Oakmont Regional High School and was expelled as a result of his distribution of controlled substances on school property. James S. Pomeroy, Jr. passed away prior to the initiation of this action. As grounds for this motion AWRSD states that the Complaint does not state a claim upon which relief can be granted.

The Complaint does not state a claim against AWRSD because it does not allege a deprivation of any recognized federal right of the Plaintiff's decedent. The Complaint is evidently intended to assert a claim for damages and injunctive relief under 42 U.S.C. § 1983 for AWRSD's alleged deprivation of the Plaintiff's decedent's right to procedural due process. The Complaint does not allege a colorable deprivation of Due Process, and even if it did, the Plaintiff cannot prevail upon his claim because an adequate post deprivation remedy existed under state law. The Plaintiff lacks

standing to assert some or all of the claims in the Complaint. The Plaintiff's decedent's claims, if any, abated with his death. Moreover, the Complaint does not allege facts which can support a viable claim of municipal liability under 42 U.S.C. § 1983..

AWRSD filed the attached exhibits in support of this motion. AWRSD has filed a memorandum of law in support of this motion concurrently with the filing of this motion.

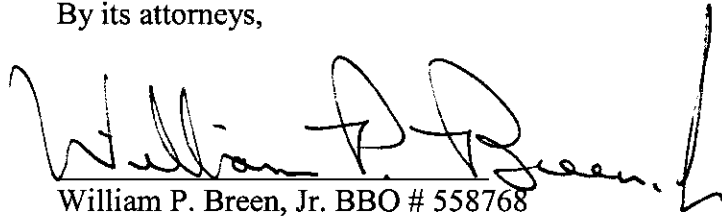
WHEREFORE, AWRSD respectfully moves the Court to dismiss the Complaint.

Request for Oral Argument.

AWRSD respectfully request oral argument on its motion.

Respectfully Submitted,

The Defendant,
ASHBURNHAM WESTMINSTER REGIONAL
SCHOOL DISTRICT,
By its attorneys,

A handwritten signature in black ink, appearing to read "William P. Breen, Jr.", with a long horizontal line extending to the right.

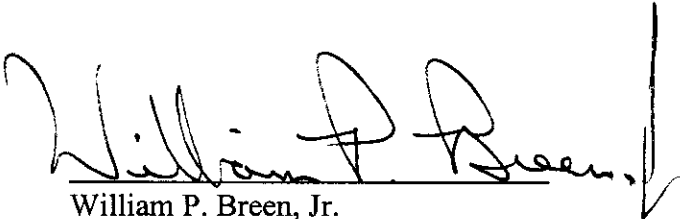
William P. Breen, Jr. BBO # 558768
Rebecca L. Andrews, BBO #644846
MURPHY, HESSE, TOOMEY & LEHANE, LLP
300 Crown Colony Drive, Suite 410
Quincy, MA 02169
(617) 479-5000

Dated: April 7, 2005

CERTIFICATE OF SERVICE

The undersigned attorney certifies that on this 7th day of April, 2005, he served a copy of the foregoing Motion to Dismiss, via first class mail, upon the following:

James S. Pomeroy
79 West Shore Drive
Ashburnham, MA 01430


William P. Breen, Jr.